

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:09-CV-359-FL

ANITA THOMAS,

Plaintiff,

v.

CUMBERLAND COUNTY SCHOOLS;  
VANSTORY HILLS ELEMENTARY  
SCHOOL; and BETTY MUSSELWHITE,  
Principal,

Defendants.

ORDER

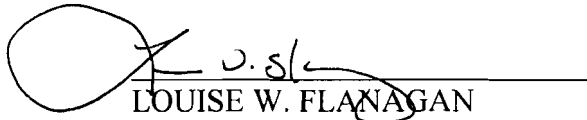
This matter comes before the court upon plaintiff's motion for reconsideration of the court's order declining to reopen her Title VII case pursuant to Rule 60(b) of the Federal Rules of Civil Procedure (DE # 60). Although that order has been appealed to the Fourth Circuit, the court retains jurisdiction to entertain the instant motion. See Fobian v. Storage Tech. Corp., 164 F.3d 887, 891 (4th Cir. 1999); Grand Jury Proceedings Under Seal v. United States, 947 F.2d 1188, 1190 (4th Cir. 1991). Because plaintiff's motion was filed within ten days of entry of the court's order, it will be treated as arising under Rule 59(e). Cf. Robinson v. Wix Filtration Corp. LLC, 599 F.3d 403, 412 (4th Cir. 2010) ("We have squarely held . . . that a motion filed under both Rule 59(e) and Rule 60(b) should be analyzed only under Rule 59(e) if it was filed no later than 10 days after entry of the adverse judgment and seeks to correct that judgment.").

Under Rule 59(e), the court may exercise its discretion to alter or amend a judgment where a party shows "that there has been an intervening change of controlling law, that new evidence has

become available, or that there is a need to correct a clear error or prevent manifest injustice.” Id. at 411. Plaintiff’s argument focuses squarely on the third ground for relief. She contends that the court legally erred in denying her motion under Rule 60(b), and invokes the merits of her underlying Title VII action in an attempt to demonstrate manifest justice in the court’s decision not to let her withdraw her stipulation of dismissal.

The court has reviewed its order as well as the instant Rule 59(e) motion, and discerns no clear error or manifest injustice in allowing the order to stand. Accordingly, plaintiff’s motion is DENIED. Consideration of her arguments may now proceed before the court of appeals, without any concern that this court will concurrently exercise jurisdiction in the matter.

SO ORDERED, this the 19<sup>th</sup> day of May, 2011.

  
LOUISE W. FLANAGAN  
Chief United States District Judge